

governs the maintenance, access, change, and release of information contained in OSD Component record systems, from which information pertaining to an individual is retrieved by a personal identifier.

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§311.3 Definitions.

Access. Any individual's review of a record or a copy of a record or parts of a system of records.

Disclosure. The transfer of any personal information from a system of records by any means of oral, written, electronic, mechanical, or other communication, to any person, private entity, or Government agency, other than the subject of the record, the subject's designated agent, or the subject's legal guardian.

Individual. A living citizen of the United States or an alien lawfully admitted to the United States for permanent residence. The legal guardian of an individual has the same rights as the individual and may act on his or her behalf.

Individual access. Access to information pertaining to the individual or his or her designated agent or legal guardian.

Maintain. Includes maintenance, collection, use or dissemination.

Personal information. Information about an individual that is intimate or private, as distinguished from information related solely to the individual's official functions or public life.

§311.4 Policy.

(a) It is DoD policy to protect the privacy of individuals involved in any phase of the personnel management process and to permit any individual to know what existing records pertain to him or her in any OSD Component covered by this part.

(b) Each office maintaining records and information about individuals shall ensure that their privacy is protected from unauthorized disclosure. These offices shall permit individuals to have access to, and to have a copy made of, all or any portion of records pertaining to them (except those referred to in Chapters 3 and 5, DoD

5400.11-R and to have an opportunity to request that such records be amended as provided by the Privacy Act of 1974. Individuals requesting access to their records shall receive concurrent consideration under the Privacy Act of 1974 and the Freedom of Information Act as amended, if appropriate.

(c) The heads of OSD Components shall maintain any record of an identifiable personal nature in a manner that is necessary and lawful. Any information collected must be as accurate, relevant, timely, and complete as is reasonable to ensure fairness to the individual. Adequate safeguards must be provided to prevent misuse or unauthorized release of such information.

§311.5 Responsibilities.

(a) The Director of Administration and Management (DA&M) shall:

(1) Direct and administer the DoD Privacy Program for OSD Components.

(2) Establish standards and procedures to ensure implementation of and compliance with the Privacy Act of 1974, OMB Circular No. A-108 (TM No. 4), and DoD 5400.11-R.

(3) Serve as the appellate authority within OSD when a requester appeals a denial for amendment of a record or initiates legal action to correct a record.

(4) Evaluate and decide, in coordination with the General Counsel (GC), DoD, appeals resulting from denials of correction and/or amendments to records by OSD Components.

(5) Designate the Records Management Division, Correspondence and Directives Directorate, Washington Headquarters Services (WHS), as the office responsible for all aspects of the Privacy Act, except that portion pertaining to receiving and acting on public requests for personal records. As such, the Records Management Division, shall:

(i) Exercise oversight and administrative control of the Privacy Act Program in OSD and those organizations assigned to OSD for administrative support.

(ii) Provide guidance and training to organizational entities as required by the Privacy Act of 1974 and OMB Circular A-108 (TM No. 4).

(iii) Collect and consolidate data from OSD Components, and submit an annual report to the Defense Privacy Office, as required by the Privacy Act of 1974, OMB Circular A-108 (TM No. 4) and DoD 5400.11-R.

(iv) Coordinate and consolidate information for reporting all record systems, as well as changes to approved systems, to the Office of Management and Budget (OMB), the Congress, and the FEDERAL REGISTER, as required by the Privacy Act of 1974, OMB Circular No. A-108 (TM No. 4) and DoD 5400.11-R.

(v) Collect information from OSD Components, and prepare consolidated reports required by the Privacy Act of 1974 and DoD 5400.11-R.

(b) The Assistant Secretary of Defense (Public Affairs) ASD(PA) shall:

(1) Designate the Director for Freedom of Information and Security Review, OASD(PA), as the point of contact for individuals requesting information or access to records and copies concerning themselves.

(2) Serve as the authority within OSD when requesters seek reconsideration of previously denied requests for access to records, and in coordination with the GC, DoD, and the DA&M, evaluate and decide on such requests.

(c) The Director for Freedom of Information and Security Review shall:

(1) Forward requests for information or access to records to the appropriate OSD Component having primary responsibility for any pertinent system of records under the Privacy Act of 1974 or to OSD Components, under the Freedom of Information Act as amended.

(2) Maintain deadlines to ensure that responses are made within the time limits prescribed in DoD 5400.7-R, DoD Directive 5400.10 and this part.

(3) Collect fees charged and assessed for reproducing requested materials.

(4) Refer all matters concerning amendments of records and general and specific exemptions under the Privacy Act of 1974 to the proper OSD components.

(5) Authorize a specific field activity of an OSD Component to act as the point of contact for individuals requesting information or access to records or copies, under the Privacy Act of 1974 for which the field activity has primary responsibility. All author-

izations by the ASD(PA) shall be coordinated with the heads of the OSD Component concerned.

(d) The General Counsel, DoD, shall:

(1) Coordinate with the Department of Justice (DoJ) on all OSD final denials of appeals for amending records, and review actions to confirm denial of access to records.

(2) Provide advice and assistance to the DA&M in the discharge of appellate and review responsibilities, and to the ASD(PA) on all access matters.

(3) Provide advice and assistance to OSD Components on legal matters pertaining to the Privacy Act of 1974.

(e) The Head of OSD Components shall:

(1) Designate an individual as the point of contact for Privacy Act matters; designate an official to deny initial requests for access to an individual's records or changes to records; and advise both DA&M and ASD(PA) of names of officials so designated.

(2) Report any new record system, or changes to an existing system, to the OSD Records Administrator, WHS, at least 90 days before the intended use of the system.

(3) Review all contracts that provide for maintaining records systems, by or on behalf of his or her office, to ensure within his or her authority, that language is included that provides that such systems shall be maintained in a manner consistent with the Privacy Act of 1974.

(4) Revise procurement guidance to ensure that any contract providing for the maintenance of a records system, by or on behalf of his or her office, includes language that ensures that such system will be maintained in accordance with the Privacy Act of 1974.

(5) Revise computer and telecommunications procurement policies to ensure that agencies review all proposed contracts for equipment and services to comply with the Privacy Act of 1974.

(6) Coordinate with Automatic Data Processing (ADP) and word processing managers providing services to ensure that an adequate risk analysis is conducted to comply with DoD 5400.11-R.

(7) Review all Directives that require forms or other methods used to collect

information about individuals to ensure that the Privacy Act of 1974 is complied with.

(8) Establish administrative systems in OSD Component organizations to comply with the procedures listed in this part and DoD 5400.11-R.

(9) Coordinate with the Office of the General Counsel (OGC) on all proposed denials of access to records.

(10) Provide justification to the ASD(PA) when access to a record is denied in whole or in part.

(11) Provide the record to the ASD(PA) when the initial denial of a request for access to such record has been appealed by the requester, or at the time of initial denial when appeal seems likely.

(12) Maintain an accurate account of the actions resulting in a denial for access to a record or for the correction of a record. This account should be maintained so that it can be readily certified as the complete record of proceedings if litigation occurs.

(13) Ensure that all personnel who either have access to the system of records, or who are engaged in developing or supervising procedures for handling records in the system, are aware of their responsibilities for protecting personal information as established in the Privacy Act and DoD 5400.11-R.

(14) Forward all requests for access to records received directly from an individual to the ASD(PA) for appropriate suspense control and recording.

(15) Provide ASD(PA) with a copy of the requested record when the request is granted.

(f) The Director for Space Management and Services (SM&S), WHS, shall:

Upon request of the OSD Records Administrator, provide the necessary automated services through the OSD support system for publishing of data in the FEDERAL REGISTER as required by the Privacy Act of 1974.

(g) The Requester is responsible for:

(1) Submitting a request for access to a record or information, in person or in writing, to the Directorate for Freedom of Information and Security Review, (DFOI/SR), OASD(PA), Room 2C757, Pentagon, Washington, D.C. 20301-1155. The Requester must also:

(i) Establish his or her identity as outlined in DoD 5400.11-R.

(ii) Describe the record sought, and provide sufficient information to enable the material to be located (e.g., identification of system or records, approximate date it was initiated, originating organization, and type of document).

(iii) Comply with procedures provided in DoD 5400.11-R for inspecting and/or obtaining copies of requested records.

(2) Submitting a written request to amend the record to the system manager or to the office designated in the system notice.

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§311.6 Procedures.

(a) *Publication of Notice in the FEDERAL REGISTER.* (1) A notice shall be published in the FEDERAL REGISTER of any record system meeting the definition of a system of records defined in DoD 5400.11-R.

(2) Regarding new or revised records systems, each OSD Component shall provide the DA&M with 90 days advance notice of any anticipated new or revised system of records. This material shall be submitted to the Office of Management and Budget (OMB) and to Congress at least 60 days before use and to the FEDERAL REGISTER at least 30 days before being put into use, in order to provide an opportunity for interested persons to submit written data, views, or arguments to the OSD Components. Instructions on content and preparation are outlined in DoD Regulation 5400.11-R.

(b) *Access to information on Records Systems.* (1) Upon request, and as provided by the Privacy Act, records shall be disclosed only to the individual they pertain to and under whose individual name or identifier they are filed, unless exempted by provisions stated in DoD 5400.11-R.

(2) There is no requirement under the Privacy Act of 1974 that a record be created or that an individual be given access to records that are not retrieved by name or other individual identifier.

(3) Granting access to a record containing personal information shall not be conditioned upon any requirement that the individual state a reason or